



**EWM v NMM (Civil Suit E012 of 2020)
[2024] KEHC 13872 (KLR) (Family) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13872 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E012 OF 2020
PM NYAUNDI, J
NOVEMBER 8, 2024**

BETWEEN

EWM APPLICANT

AND

NMM RESPONDENT

RULING

1. The Applicant herein, took out Originating Summons dated 24th November, 2023 against the Respondent seeking declaration of the following;
 1. A vesting order be issued for the applicant herein, EWM sell L.R Number Nairobi/Block 82/XXXX situated in Donholm PH8 Estate.
 2. A vesting order be issued declaring that L.R Number Nairobi/Block 82/XXXX situated in Donholm PH8 Estate be registered and transferred to Ahmed Nache Ano.
 3. The Respondent be condemned to pay costs of this application and incidentals.
2. The Summons was supported by the grounds on the face of the same and by the Affidavit of even date sworn by the Applicant.
3. The Respondent did not respond to this application. Although an Advocate, Mr. Maina appeared in Court on his behalf when the matter was mentioned on 25th April 2024, 27th June 2024 and 19th September 2024.
4. The Applicant states briefly that she and the Respondent lived as husband and wife from 2005 to 2018. Their marriage was dissolved vide Milimani Chief Magistrate’s Court Divorce Cause No. 91 of 2018.



During the subsistence of their marriage, she acquired a property known as Nairobi/Block 82/XXXX situated in DonholmPH8 Estate.

5. The property was jointly registered in their names. She filed an Originating Summons dated 20th November 2020 seeking orders in respect to the above property. Vide a Judgment delivered on 28th October 2021 by Hon. Justice Muchelule, (as he then was), held that the applicant and the Respondent have equal beneficial claim to the house; that the house in question together with the developments shall be sold and the proceeds shared equally. To enable this, the house shall be valued. Either party shall be at liberty to buy off the other; that in the event the buyer is found by the applicant and the Respondent is unwilling to sign the necessary documents of sale, the Deputy Registrar of this court be and is hereby authorized to sign them; that the costs of the summons shall be paid by the Respondent.
6. She averred that she has now found a buyer who has deposited Kshs. 1,150,000. The Respondent refused to execute both the sale agreement and the transfer documents in respect to the sale prompting her to file an application that the Deputy Registrar do execute the documents. The Deputy Registrar signed the documents. The purchaser through his advocates lodged the documents before the Chief Land Registrar to enable a transfer in his favour on 17th October 2023.
7. However, the purchaser has not been successful in having the property registered in his name and has threatened to cancel the transaction and institute legal proceedings against her for breach of contract. She argued that she stands to suffer irreparable harm if the sale does not go through. She asked the court to issue an order against the Land Registrar to transfer the property to the purchaser, Mr. Ahmed Nache Ano.

Applicant's Submissions.

8. The Applicant's submissions are dated 21st May, 2024. The Applicant submitted that the sale and transfer of Nairobi/Block 82/XXXX situated in Donholm PH8 Estate was initiated vide the judgment of this court. That the fact that the Respondent did not challenge the decision of this court, the application should be allowed as prayed. Reliance was placed on the decision in Benard Kiprono Bett v Benard Kiprono Koech[2021] eKLR.
9. It was further submitted that the application should be allowed on the ground that the judgement was not set aside and the Applicant is seeking assistance of this court to enforce an existing court order.

Analysis and Determination.

10. The property in question is essentially the suit property Nairobi/Block 82/XXXX situated in Donholm PH8 Estate which was declared as matrimonial property. The court in its judgment delivered on 28th October 2021 held that; The applicant and the Respondent have equal beneficial claim to the house; that the house in question together with the developments shall be sold and the proceeds shared equally. To enable this, the house shall be valued. Either party shall be at liberty to buy off the other; that in the event the buyer is found by the applicant and the Respondent is unwilling to sign the necessary documents of sale, the Deputy Registrar of this court be and is hereby authorized to sign them; that the costs of the summons shall be paid by the Respondent.
11. The Applicant in her supporting affidavit averred that the property was valued and she has received a deposit of Kshs. 1,150,000. She is seeking an order to have the property transferred and registered in the purchaser's name. Efforts to have the property transferred and registered in the purchaser's name have been futile.



12. It is clear to me that without the cooperation of the Respondent, these orders cannot be implemented. He has failed to participate in these proceedings and the Applicant has stated, through her counsel, that she has made all efforts to transfer the property so as to effect the sale but her efforts have hit a snag even after the Deputy Registrar has signed the transfer documents.
13. The Respondent failed to attend court despite being served. This is frustrating the Applicant who is not able to proceed with the execution of the judgment of this court.
14. To my mind the orders issued by this court on 28th October 2021 are clear. Those orders were not issued in vain. The Respondent has not appealed the said Judgment.
15. After careful consideration of the application before me, I grant the following orders:
 - i. That the Land Registrar, Nairobi, is hereby directed to register the purchaser, Applicant, ANA, as the absolute proprietor of Nairobi/Block 82/XXXX situated in Donholm PH8 Estate and issue him with the title deed.
 - ii. That the proceeds of the sale of the above property be shared equally between the Applicant and the Respondent pursuant to the orders of this court less the costs of the transaction.
 - iii. This being a matrimonial matter, I order that each party shall bear their own costs.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

P M NYAUNDI

JUDGE

In the Presence of

Fardosa Court Assistant

